

FCC MAIL SECTION

Federal Communications Commission

DA 99-2356

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DISPATCHED BY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

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Amendment of Section 73.202(b),

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MM Docket No. 99-322

Table of Allotments,

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RM-9762

FM Broadcast Stations.

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(Chillicothe and Ashville, Ohio)

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**NOTICE OF PROPOSED RULE MAKING****Adopted: October 20, 1999****Released: October 29 1999**

Comment Date: December 20, 1999

Reply Comment Date: January 4, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Secret Communications II, L.L.C. ("petitioner"), requesting the reallocation of Channel 227B from Chillicothe to Ashville, Ohio, as the community's first local aural service, and the modification of Station WKKJ's license to specify Ashville as its community of license. Petitioner states that it will apply for the channel, if allotted to Ashville.

2. Petitioner filed its request pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). In support of the proposal petitioner states that the requested reallocation, which is mutually exclusive with its existing authorization at Chillicothe, would fulfill a higher allotment priority by providing a first local aural service to Ashville (pop. 2,254),<sup>1</sup> while Chillicothe (pop. 21,923), will continue to receive local full-time service from commercial FM Station WFCB, Channel 232B1, noncommercial FM Stations WVXC, WOHC and WOUH, and AM Stations WCHI and WBEX, and reception service from fifteen stations.

3. Petitioner states that Ashville has its own government, administered by an elected mayor and city council, zoning board, police department, and water and sewer departments. According to the petitioner, Ashville also has its own local zip code and local exchange prefix, as well as several churches, commercial businesses, community park, and various community organizations, such as the Kiwanis, the Ashville Community Men's Club and the Ashville Civic Women's Club. Petitioner notes that Harrison Township, of which Ashville is the largest community, provides fire protection and the

<sup>1</sup> Population figures reported herein were taken from the 1990 U.S. Census Reports.

local public elementary, junior and senior high schools, are all part of the Teays Valley School District, whose administrative offices are located in Ashville.

4. Petitioner points out that Station WKKJ is a pre-1964 grandfathered short-spaced station with respect to Station WAKW, Channel 227B, Cincinnati, Ohio, also a pre-1964 grandfathered station. On March 5, 1999, the station was granted a construction permit to specify a new transmitter site and height above average terrain (BPH-19981201IA). However, since it is proposing to use the transmitter site specified in its outstanding construction permit, petitioner states that the short-spacing is not an impediment to the requested change in the Table of Allotments. Petitioner states that neither Chillicothe nor Ashville are located within the Columbus Urbanized Area or any other Urbanized Area. Further, since the station's 70 dBu contour will encompass only 8.3 percent of the Columbus Urbanized Area, petitioner submits that the proposal is not subject to the interdependence showing outlined in *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951), and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

5. We recognize that Section 1.420(i) of the Commission's Rules does not specifically address grandfathered short-spaced stations such as this one. However, the Commission has previously found that we would consider waiving strict application of Section 73.207 in limited circumstances, provided that no new short-spacings are created, no existing short-spacings are exacerbated, and the potential for interference between the currently short-spaced stations is not increased. *See, Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992). Channel 227B can be allotted to Ashville with a site restriction of 11.9 kilometers (7.4 miles) southeast.<sup>2</sup> This site, which is the site specified in Station WKKJ's outstanding construction permit, will maintain the short-spacing to Station WAKW, Cincinnati.

6. We believe petitioner's proposal warrants consideration since the reallocation of Channel 227B from Chillicothe to Ashville could provide the community with its first local aural service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Ashville, Ohio	--	227B
Chillicothe, Ohio	227B, 232B1	232B1

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2

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<sup>2</sup> The coordinates for Channel 227B at Ashville are 39-37-17 North Latitude and 82-53-13 West Longitude.

of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before December 20, 1999, and reply comments on or before January 4, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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Washington, D.C. 20006  
(Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation

and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

**FEDERAL COMMUNICATIONS COMMISSION**

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs,

or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.